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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,
10 Plaintiff,
11 vs.
12 Jordan Everett Stevens,
13 Defendant

} Case No.: 1:19-CR-2038-SAB

} Response to Rule 33 Brief on
} Timeliness

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16
17 **RULE 33(b)(1) Motion for New Trial**
18

19 THE DEFENDANT, through his Counsel Virginia Rockwood,
20 submits the following response to the brief filed by AUSA
21 Richard C. Burson on timeliness of Rule 33 Motion for New Trial
22 as requested by the Court. (ECF 207). It is part of the record
23 that on October 5, 2021 several months after the trial and
24 conviction of the defendant, Ms. Emmans filed a Motion for New
25 Trial (ECF 167) on the basis of her own ineffective assistance
26 of counsel. This motion was based on her confusion and medical

27 SUPPLEMENTAL MEMORANDUM- 1

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1 event during Day 3 of the trial relating to a mix up in her
2 prescription drugs. This medication mix up was discovered some
3 weeks after the trial ended. After consultation with her medical
4 provider, she took the newly discovered information and filed a
5 Rule 33(b)(1) motion for new trial. (ECF 167) (Exhibit A and B)
6 which explain the excusable neglect and delay in her filing the
7 motion. It would not have been possible for her to file such a
8 motion within the 14 days contemplated in the rule. Once she had
9 the August 25th 2021 letter from her ARNP Nicole Storlie, she was
10 able to determine an explanation for the events she described in
11 her motion which is pending before this Court.

12 13 14 **ARGUMENT**

15
16 U.S. v. Jensen CR-08-054-JLQ (E.D. Wash Sept. 27, 2010) does
17 outline an avenue that this Court can take. It can in fact find
18 excusable neglect and grant the motion for new trial considering
19 Rule 45(b)(1)(B). The Motion for New Trial filed by Ms. Emmans
20 (ECF 167) gives the reasons for its untimely filing. The Court
21 does have authority to find excusable neglect. That is exactly
22 what the Court in Jensen did to uphold the defendant's 6th
23 Amendment right to effective counsel. The Government asks the
24 Court to discard Jensen and deny the motion. The defendant
25 Jordan Stevens asks the Court to grant the motion for new trial.
26 A distinction is that Jensen did not really address this

27 SUPPLEMENTAL MEMORANDUM- 2

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1 situation because the ineffective assistance of counsel was not
2 self-reported as we have here. Ms. Emmans could not have known
3 immediately after the trial or within 14 days the excusable
4 reason for her performance. This knowledge occurred only after
5 discovery of her medication mix up. That is excusable neglect,
6 which she submitted to the Court in her motion for new trial
7 once she had medical confirmation. This distinction allows
8 additional reasoning to consider the claim of ineffective
9 assistance of counsel by Ms. Emmans.

10
11 To address the issue raised by the Government of bad faith,
12 the declaration filed by the defendant Mr. Stevens (ECF 203)
13 recounts his recollection of the events during her confused
14 state at trial. This is not evidence of bad faith, but his own
15 personal perspective. It shows the prejudicial effect of Ms.
16 Emmans performance. The withdrawal of the motion for mistrial by
17 co-counsel Mr. Klein should not be held against the defendant to
18 prove bad faith. That withdrawal was addressed in prior
19 briefing.

20
21 The Advisory Committee's Notes to the rule does not prevent
22 this Court from reviewing all of the pleadings submitted to find
23 sufficient information to overcome the arguments in the
24 Governments brief. In this instance Ms. Emmans filed her motion
25 only when she discovered the cause of her ineffective assistance
26

27 SUPPLEMENTAL MEMORANDUM- 3

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1 of counsel. She has filed sufficient affidavits to proffer the
2 information needed to find excusable neglect for the delay.

3
4 A hearing has been requested in this case to flesh out any
5 evidentiary gaps for the Court. The issue of a hearing was
6 discussed in this case at the December 1, 2021 first hearing on
7 the motion for new trial. This Court pointed out that the record
8 may need to be supplemented. The undersigned was appointed new
9 counsel on the issue of this motion. There has been extensive
10 briefing in this case at the request of this Court to examine
11 the unusual timing and self-reporting of an ineffective
12 assistance claim; and now the issue of timely filing. The
13 Government's first brief did not object on the issue of
14 timeliness. This careful and deliberate process has benefitted
15 both parties. Shinn v. Martinez No. 20-1009 decided in the
16 United States Supreme Court last week, May 23, 2022 gives a
17 detailed review of Ineffective Assistance of Counsel claims
18 reviewed on appeal and 2255 petitions. The thrust of the opinion
19 leads to the conclusion that development of the record belongs
20 with the District Court. That is exactly where this case stands
21 today and was predicted by this Court. A hearing for further
22 testimony is currently scheduled.

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27 SUPPLEMENTAL MEMORANDUM- 4

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CONCLUSION

The Motion for New Trial (ECF 167) filed by Ms. Emmans asks the Court to not bar the motion on timeliness grounds but to find grounds to grant Mr. Stevens a new trial based on all of the evidence in the record, excusing the delay in the Rule 33 filing, hold the hearing and hear argument. The law has been recounted in the prior briefs and respectfully, the Court is now asked to grant the motion.

Dated this 1st day of June, 2022.

/s/Virginia Rockwood
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CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: AUSA Richard C. Burson

Dated this 1st day of June, 2022.

s/Virginia Rockwood
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SUPPLEMENTAL MEMORANDUM- 6

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